

To: Perkins, Erin[Perkins.Erin@epa.gov]; Ward, W. Robert[Ward.Robert@epa.gov]; Logan, Paul[Logan.Paul@epa.gov]
From: Saldenha, Jasmine
Sent: Thur 8/6/2015 5:35:52 PM
Subject: RE: Reply Requested Durango Herald: Does policy offer shelter from legal storm?

All,

Attorney Client/Ex. 5

Jasmine

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ATTORNEY-CLIENT PRIVILEGE

From: Perkins, Erin
Sent: Thursday, August 06, 2015 11:07 AM
To: Ward, W. Robert; Logan, Paul; Saldenha, Jasmine
Subject: FW: Reply Requested Durango Herald: Does policy offer shelter from legal storm?

Hi - **Attorney Client/Ex. 5**

From: Miullo, Nat
Sent: Tuesday, February 19, 2013 1:51 PM

To: Hestmark, Martin; Stavnes, Sandra; Watchman-Moore, Derrith; Videtich, Callie; Gaydosh, Mike; Sierra, Eddie; Cohn, Matthew; Madigan, Andrea; Rathbone, Colleen; Campbell, Gwen; O'Connor, Darcy; Perkins, Erin; Boydston, Michael; Livingston, Peggy; Ostrander, David; Williams, Laura; Miller, Johanna; Heffernan, Daniel; Bloom, Judy; Hoskie, Sadie; Hanley, Jim; Garcia, Bert; Monahan, Peter; Ismert, Peter; Kleeman, Gary

Cc: Gorke, Roger; Russell, Carol; Lensink, Andy; Hudiburgh, Gary; Mylott, Richard; Cantor, Howard; Hutchinson, Marcella; Logan, Paul; Ward, W. Robert

Subject: FW: Reply Requested Durango Herald: Does policy offer shelter from legal storm?

Good afternoon. How's your outlook?

This is just one of many articles following EPA's December memo on Good Samaritan clean ups.

On February 5, Jim Martin, Roger Gorke, Andy Lensink and I met with several State of Colorado representatives who also expressed some trepidation at first, reflected in this article. By the end of the meeting we heard most were willing to continue to be EPA's partner in Good Sam clean ups, and particularly, simpler water treatment scenarios.

Please let me know your interest in a joint briefing where Roger, Andy and I would share the highlights of the meeting with Colorado, and then open the discussion up for your questions. It is likely most of you on this list, perhaps others who report to you, or whom you work with, would be involved in going forward with agreements and overseeing Good Sam work (e.g. OSCs). Please share this with any one you think would be interested and I may have forgotten.

Thanks

Nat @ 6233

From: Mylott, Richard

Sent: Tuesday, February 19, 2013 8:52 AM

To: Miullo, Nat; Martin, James; Russell, Carol; Cantor, Howard; McClain-Vanderpool, Lisa; Allen, Matthew

Subject: Durango Herald: Does policy offer shelter from legal storm?

'Good Samaritans' leery of liability in cleaning up mine wastewater near Silverton

By Dale Rodebaugh Herald staff writer

Article Last Updated: Monday, February 18, 2013 10:51pm

Keywords: Silverton, Environmental cleanup,



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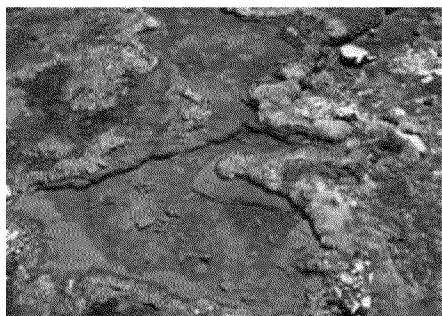
[photo](#)

JERRY McBRIDE/Durango Herald

Consultants from Waste Water Management set up a water-treatment experiment based on an electrochemical process near the opening of the American Tunnel in the Gladstone ghost town north of Silverton. Zinc, iron, copper, lead, cadmium, manganese and mercury are all being released from old mines into Cement Creek, and the heavy metals eventually reach the Animas River .

Animas River Stakeholders Group members will hear reports and updates on mine-waste cleanup

and water quality at their meeting Thursday in Silverton.



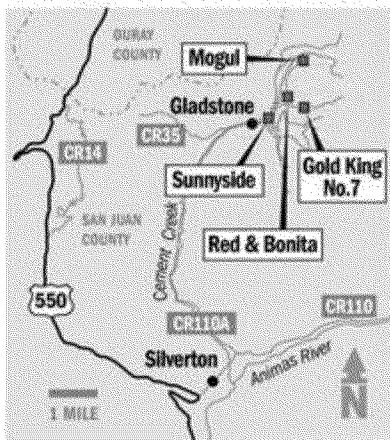
[Enlarge photo](#)

JERRY McBRIDE/Durango Herald

Water flowing from Bonner Mine near South Mineral Creek is rich in iron, creating the red-colored soil. Iron is one of the half-dozen metals finding its way from abandoned mines into streams that feed directly or indirectly into the Animas River

Silverton area mine cleanup

Four mines – Mogul, Red & Bonita, Gold King No. 7 and Sunnyside (drained by the American Tunnel) discharge up to 800 gallons a minute of toxic water into Cement Creek, a tributary to the Animas River.



[Enlarge photo](#)

But the agenda lists nothing about a topic dear to their hearts – ironclad assurance that they can't be dragged into court down the road for taking on projects that involve direct water-quality improvement projects in a San Juan County historic mining district.

Nat Miullo, revitalization and clean-energy adviser in Environmental Protection Agency Region 8, said the stakeholders know there's no absolute certainty in third-party lawsuits.

“But we’re very comfortable in being able to give assurances that we can craft an administrative

order that will help with long-term protection,” Miullo said.

The stakeholders, since they formed in 1994, have completed at least a dozen mine-waste projects around Silverton. But the work involved burying or removing heaps of tailings and other waste, so rain and melting snow can’t leach toxic metals into creeks and ultimately into the Animas River.

But they haven’t treated toxic water draining from abandoned mines because good Samaritans, as volunteer organizations are known, would be liable under federal environmental law for any damages or residual waste.

In December, the EPA reinterpreted its policy, easing restrictions. Under the new guidelines, good Samaritans don’t need a Clean Water Act permit during or after a project. They also can be exempt from responsibility for point-source pollution – heavy-metal crud coming from a specific place such as a mine shaft.

Still, stakeholders are wary.

“The main point is the EPA definition of a good Samaritan as a nonoperator (of a mine),” said Peter Butler, one of three coordinators of the group. “The guidance is not regulation. It’s not law.

“It would seem hard to consider anyone who does maintenance on a mine after cleanup to be a non-operator,” Butler said. “It’s hard to know the motives of a third-party lawsuit. It could be an effort to gain leverage for some other purpose.”

An understanding or agreement with the EPA on the definition of a nonoperator isn’t a good defense in a trial, Butler said.

Treating or eliminating the drainage of four mines in the Gladstone area north of Silverton as the stakeholders want to do, would go a long way to improve water quality.

Four mines, the Sunnyside, Red and Bonita, Gold King No. 7 and Mogul, drain up to 800 gallons a minute of iron, zinc, copper, lead, cadmium, mercury and manganese into Cement Creek, a tributary to the Animas River,

Bill Simon, another stakeholder coordinator, said all action is on hold.

“We’re waiting to see if the Colorado Division of Reclamation Mining and Safety and the Colorado Department of Public Health and Environment will take on site maintenance,” Simon said. “The would let us off the hook.”

Bruce Stover, director of active and inactive mines at the Colorado Division of Reclamation, Mining and Safety, said the office is talking to the EPA about participation with good Samaritans in mine cleanup.

“It’s a step forward in the right direction to provide a level of comfort for good Samaritans,”

Stover said. "But it may have to be tested in a court of law."

Paul Frohardt, administrator of the Colorado Water Quality Control Commission, is of a similar mind.

"I think the EPA recognizes this isn't a clear legal opinion," he said. "They may be looking for mechanisms to allow some projects."

Frohardt said a possible solution would be to allow an active cleanup permit to remain in effect.

Miullo said the agency is open to proposals.

"We're confident that there are mechanisms within this guidance to help good Samaritans qualify to move forward and do good work," Miullo said.

At one time, it was feared the EPA would designate all of San Juan County a Superfund site and direct environmental cleanup itself. But given community opposition and the remediation projects of stakeholders, the agency backed off last year in favor of a collaborative approach.

Sen. Mark Udall, D-Colo., who pushed the EPA to make it easier for good Samaritans to carry out cleanup projects without fear of legal attacks, said in an email statement that he's keeping his eye on the situation.

"At my request and urging, the EPA developed a new policy last year designed to expand the ability of good Samaritans to clean up abandoned mines in Colorado by limiting the risk they'd get sucked into lawsuits," Udall said. "I am confident this new policy gives good Samaritans the assurances they need to clean up additional abandoned mine sites."

"However, I plan to stay in contact with good Samaritan groups to evaluate the effectiveness of this new policy and to see if they need additional legal assurances to do their work."

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